



An
Bord
Pleanála

Inspector's Report ABP-318059-23

Development	Milking parlour with effluent tank and associated site works.
Location	Courtstown, Kilmanagh, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2360206
Applicant(s)	Edmond, Margaret & Gavin Joyce.
Type of Application	Planning Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Dominic Cass.
Observer	Martin Cass.
Date of Site Inspection	9 th August 2024.
Inspector	Peter Nelson

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Courtstown, Co. Kilkenny, approximately 4km northwest of Kilmanagh and approximately 2 km southwest of Tullaroan. The site is accessed from the L10083-1 local road through a laneway that is in separate ownership. The site contains a farm complex and a dwelling.
- 1.2. The site has a stated site area of 1.2ha and is part of a larger landholding. The surrounding area is made up of agricultural land. There is a watercourse to the west of the site which flows north.
- 1.3. The existing farmyard complex comprises several agricultural structures, including an existing milking parlour, dairy, cubicle houses, slatted tanks and silage pit.

2.0 Proposed Development

- 2.1. The proposed development consists of a milking parlour, which includes a collecting yard/drafting yard, meal bin, storage, flow channels, water tank, underground effluent tank and an extension to a loose shed and all associated works.

3.0 Planning Authority Decision

3.1. Decision

On the 13th July 2023 the Kilkenny County Council requested the applicant to submit further information relating to sufficient interest to carry out the proposed works and the status of the right of way to the application site, a revised layout drawing showing cow flow details, water separation, revised layout showing details of drainage channels to existing slurry tanks, adequate storage for effluents and manure and storage of farmyard manure.

On the 25th August 2023 Kilkenny County Council recommended that permission be granted subject to 6no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the first planning report dated the 12th July 2023 can be summarised as follows:

- There is no requirement for an Environmental Impact Assessment or an Appropriate Assessment.
- The cumulative buildings, as proposed, are not considered to pose any negative visual or residential impact on the neighbouring properties.
- Clarity is required on the status of the access to the subject site.

The main points of the second planning report dated the 25th August 2023 can be summarised as follows:

- It is not within the remit of the planning authority to adjudicate on civil matters.
- The environmental matters raised by the Environmental Section have been addressed.

3.2.2. Other Technical Reports

- The Environmental Report dated the 11th July 2023 recommended that the applicant submit further information.

3.2.3. Conditions

I consider that five of the conditions attached by the Planning Authority in its decision to grant permission, in this case, are generally standard conditions insofar as they relate to a milking parlour. However, condition No.6, attached by the planning authority, relates to the engagement of an archaeologist to monitor all site clearance works. I note that there is a recorded monument and a circular enclosure on the applicant lands outlined in blue, which is approximately 300m from the farmyard complex. Having regard to the distance to the proposed development and the contained nature of the enclosure, I recommend that if the Board is minded to grant permission, this condition be omitted.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

One observation was recorded on file from the appellant. The main points raised can be summarised as follows:

- Objection to the blockage with an existing right of way.
- An entrance wall has been constructed across this right of way.
- Concerns relating to current stormwater runoff from the existing farm.
- Another party has a right of way to this lane.
- Neither the right of way nor the existing gate at the end of the right of way has been highlighted on the application.

4.0 Planning History

P.A. Ref: 21/554 Application deemed to be withdrawn on 26th April 2021 for permission to erect an extension to an existing calf house & ancillary concrete works on our lands

P.A. Ref: 19/290 Permission granted on the 23rd July 2019 to erect a silage pit and a concrete apron,

P.A. Ref:14/252 Permission granted on the 5th August 2014 to erect a dairy cubicle house including an under-ground slurry storage tank and ancillary concrete works

P.A. Ref: 98/566 Permission granted on the 15th July 1998 for slatted tank and easy feed systems.

5.0 Policy Context

5.1. Development Plan

The Kilkenny City and County Development Plan 2021-2027 is the operational plan for the area. The plan came into effect on the 15th October 2021.

5.1.1. Relevant Development Plan Sections

5.2.4 Agriculture and Food

The Plan will facilitate and support the development of agriculture and food while ensuring the highest standards of environmental protection in the assessment of planning applications for all development proposals.

7.2 Agriculture

Agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture. In recent years agriculture has contributed to the growth in export revenue. Kilkenny has a well-established agri-food sector with food and drink production and processing representing a sizeable proportion of the local economy, see Chapter 5, Economic Development. The major companies operating in this sector within the county are Glanbia PLC and Connolly's Red Mills, complemented by an emerging artisan food producer base of approximately 40 micro and medium sized food producers.

5.2. Natural Heritage Designations

5.2.1. The subject site is not located within a designated European Site. However, the closest such site is:

- River Barrow and River Nore Special Area of Conservation located approximately 4km west of the site.

5.3. EIA Screening

5.4. I note that the observer to the appeal states that the planning authority is required to form and record a view as to the environmental impacts of the development. I refer the Board to Appendix 1 – Form 1 EIA Pre-Screening.

5.5. The form of development proposed, and which is the subject of this application, is such that it would not be of a class for the purposes of EIA as per the classes of development set out in the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended). Therefore, no mandatory requirement for EIA arises, and there is also no requirement for a sub-threshold assessment.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal from Mr Cass can be summarised as follows:

- The permission granted interferes directly with his easement rights by blocking access if constructed.
- The planning authority had no legal authority to include or adjudicate the appellant's property rights.
- The right of way was registered on the 2nd February 1922.
- The initial planning application did not show the right of way on the drawings.
- The grant of permission created a landlocked lot.
- Dennehy V An Bord Pleanála is relevant in this application: Rights of way were a matter of law not planning.
- The planning authority failed in its duty to acquire the necessary clarification relating to the right of way.
- The appellant was not given the opportunity to respond to the submitted further information.
- The development as granted will be detrimental to the appellant's land holding, making it impossible to carry out daily functions and duties.
- The appellant's additional entrance mentioned in the planner's report is impassable and incompatible with farm machinery.
- The further information request was not adequately replied to.
- The access laneway to the applicant site is in his ownership.
- The applicants have a right of way over their land.
- This right of way is also an access to his farm
- Clarification of further information should have been requested.
- Permission should be refused in order to protect the appellant's property rights as a registered and necessary integral part of his family farm holding.

6.2. Applicant Response

The applicant's solicitor has submitted an affidavit of the applicant dealing with the appellant's issue concerning a right of way. The points raised can be summarised as follows:

- No right of way exists, and no right of way has been exercised by the adjoining property or any other party through, over and along their property for the last 50 years.
- If such a right of way existed, it has long been extinguished by a continuous period of non-user of the said right of way by any person.
- The adjoining property owner or his agents have recently interfered with a boundary between the properties by creating an opening, erecting a gate, and removing an earth bank.
- These works have been carried out to establish the use of the right of way, which has long since been extinguished.
- These works were carried out while the applicant was attending a family funeral.

6.3. Planning Authority Response

In an email dated the 22nd September 2023, the planning authority states they have no comments to make regarding the appeal.

6.4. Observations

One observation was received from Martin Cass. The main points raised can be summarised as follows:

- An appropriate Assessment is required as the Tullaroan watercourse flows from the site to the River Barrow and River Nore Special Area of Conservation.
- The soak pit of the proposed development is located at a high point with a steep slope running directly towards the watercourse.

- The planning authority is required to form and record a view as to the environmental impacts of the development.
- The development must be assessed for compliance with the requirements of the water framework directive.
- Permission should be refused for failure to provide the appropriate assessment required under the Planning Acts 2000.

6.5. Further Responses

None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Land Ownership and Right of Way
- Water
- Appropriate Assessment

7.2. Land Ownership and Right of Way

- 7.2.1. The appellant claims that granting permission for the proposed development will interfere directly with their right of easement by blocking access if the proposed development is constructed.
- 7.2.2. The appellant has stated that the right of way/easement has been in continuous use since living memory. He states that there was no mention of the right of way in the original planning application, which was not shown on the original planning application drawings.

- 7.2.3. Article 22 (2)(b)(ii) requires that the location map submitted with a planning application should mark clearly any wayleaves in yellow. In the application location map the access laneway was included in the site outline in blue. No wayleaves were marked in yellow.
- 7.2.4. As part of a further information request, the applicant was requested to demonstrate sufficient interest to carry out the proposed works and to clarify the manner of rights of access to the application site and any third-party rights of access that may be affected by the proposed development.
- 7.2.5. On foot of this request, the applicant submitted a letter from their solicitor, which states that his property is serviced by way of a laneway from the public road and that this laneway is in the ownership of the Mr Cass, the appellant. It states that the applicant has used this laneway continuously and without interruption for many years. It also states that the appellant does not or has not exercised a right of way over the laneway.
- 7.2.6. In the appeal observations, the appellant states that the right of way is in use and has submitted photographs showing his farm machinery using his right of access to the applicant's land.
- 7.2.7. In response to the appeal, the applicant has submitted an affidavit. He states that he is aware that Mr Cass claims he has a right of way from the adjoining lands through his farm. The applicant states that no such right of way exists and no right of way has been exercised by the adjoining property or any other party through, over and along his property for the last 50 years.
- 7.2.8. Article 22 of the Planning and Development Regulations 2001, as amended, sets out requirements for the content of planning applications generally. Article 22(2)(g) states that where the applicant for permission is not the legal owner of the land or structure concerned, the application shall be accompanied by the written consent of the owner to make the application. The applicant has submitted a Land Registry folio map, which includes the application site. I consider that the applicant has sufficient legal estate or interest in the site in order to apply for planning permission. I do not consider that the appellant has submitted evidence of a clear lack of sufficient legal interest in the site on the part of the applicant.

- 7.2.9. It is of note that any issue of ownership or boundary disputes regarding private rights of way, etc., are civil matters and I do not propose to adjudicate on these issues. In this case, note is had to the provisions of S.34(13) of the Planning and Development Act 2000 (as amended): "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..."
- 7.2.10. The Board should bear in mind that a grant of permission does not amount to a determination of title, and that the Board is entitled to rely on the prima facie evidence before it.

7.3. Water

- 7.3.1. The appellant in their appeal submission contends that the development must be assessed for compliance with the requirements of the Water Framework Directive. The WFD is implemented through River Basin Management Plans (RBMPs) and the subject lands are located within the Nore Catchment and the Munster Sub Catchment. I note that groundwater quality is classed as 'good' in the most recent WFD Status
- 7.3.2. I note that agriculture is listed as a 'significant pressure' type category for at risk waterbodies only. Given the nature and extent of works proposed and in noting to the Board that landspreading does not form part of this application and given that there are no immediate waterbodies/hydrological connections to this site and that all soiled waters are directed to a storage tank, I am satisfied that the proposal will not pose a risk to ground or surface waters. I suggest that standard conditions in regard to the treatment of surface water be attached, in the event that the Board is minded to grant permission.

7.4. Appropriate Assessment.

- 7.4.1. In the observation received, Mr Martin Cass stated that he believes that an appropriate assessment is required for the proposed development and that the planning authority incorrectly identified the location of the watercourse adjacent to the site. Mr Cass also states the soak pit for the proposed development is located at a high point with a steep slope running directly toward the watercourse.
- 7.4.2. As it is a requirement for the Board, as the competent authority, to carry out an Appropriate Assessment for the proposed development, I do not consider that new issues have been raised in the observation. If the Board considers that the issues raised in the observation are new, Section 131 of the Planning and Development Act can be invoked.

7.5. AA Screening

- 7.5.1. The requirements of Article 6(3) of the Habitats Directive as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 – 2023, are considered fully in this section.
- 7.5.2. The project is not directly connected with or necessary to the management of a European site, and therefore, it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.3. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European site.
- 7.5.4. The proposed development is for a milking parlour, which includes a collecting yard/drafting yard, meal bin, storage, flow channels, water tank, underground effluent tank, and an extension to a loose shed and all associated works.
- 7.5.5. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
 - Construction phase: uncontrolled surface water run-off bearing silt and pollutants, and

- Operational phase: surface water run-off and storage of slurry.

- 7.5.6. The development site is not located in or immediately adjacent to a European site. The closest European site is River Barrow and River Nore Special Area of Conservation (Side Code 002162), located approximately 4km west of the site. There is no hydrological link between the subject site and this section of the SAC.
- 7.5.7. The EPA's map of the area surrounding the site shows a stream passing at its closest point, c.100m, to the west and north of the proposed development site. This stream flows east and then south to the above-cited SAC. The distance from the watercourse adjacent to the site and the SAC is c.11.4km.
- 7.5.8. A revised site plan and a report from Teagasc were submitted as part of further information. The Teagasc report confirms that there is adequate capacity for soiled water and for the new parlour washing on the farm complex. The report also states that all silage effluent form is collected and stored in an existing tank. Farmyard manure is stored in the empty silage pit, and the seepage is gathered via the channel and stored. The proposed storage is 50m³, which is in excess of the stated requirement of 65m³.
- 7.5.9. These measures would be undertaken to safeguard water quality regardless of the European Site cited above.
- 7.5.10. Although there is a hydrological link between the watercourse adjacent to the site and the SAC, the distance is c.11.4km, and given the adequate storage for all effluents and manures and the soakaway collection of clean water, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.
- 7.5.11. The reason for this conclusion is as follows:
- Having regard to the absence of any direct hydrological connection from the subject site to any European Site. The nearest watercourse is located approximately 110 metres north of the site.
 - The distance from the site to the River Barrow and River Nore Special Area of Conservation.
 - No ex-situ effects are likely having regard to the characteristics of the site, which comprises a yard area of hard surfacing surrounded by agricultural

fields laid in grass between the site and the River Barrow and River Nore Special Area of Conservation.

- Having regard to the screening report and determination of the PA.

7.5.12. I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

7.5.13. Likely significant effects are excluded, and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.0 Recommendation

I recommend that permission for the said development be granted subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the Kilkenny City and County Development Plan 2021-2027, it is considered that the proposed milking parlour, including a collecting yard/drafting yard, meal bin, storage, flow channels, water tank, underground effluent tank and an extension to a loose shed on the site would be an appropriate addition to the existing farmyard, which would further good farming practice. It would be compatible with the visual and residential amenities of the area. The proposed development would not have a likely significant effect on any European Site. The proposal would, therefore accord with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 23rd day of

May 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, watercourses or to appropriately sized soakaways. Uncontaminated waters shall not be allowed to discharge to soiled water and/or slurry tanks or to the public road.

Reason: In order to ensure that the capacity of soiled water tanks is reserved for their specific purposes.

3. All soiled waters and slurry generated by the proposed development shall be conveyed through properly constructed channels to the proposed and existing storage facilities. No soiled waters or slurry shall discharge or be allowed to discharge to any drainage channel, stream, watercourse or to the public road.

Reason: In the interest of public health

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and

Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Peter Nelson
Planning Inspector

29th October 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	318059-23
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Proposed Development Summary	Milking parlour with effluent tank and associate site works.		
Development Address	Courtstown, Kilmanagh, Co. Kilkenny.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
Conclusion			
No	X	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____